

REMARKS

This is responsive to the outstanding Office Action. With this Response, claims 1, 5, 13, 22, 25, 33, 35, 36 and 42 have been amended. Claims 18, 21, 29 and 38 have been cancelled due to amendments to their respective independent claims in order to avoid duplicity of claimed subject matter. The application after amendment, includes claims 1-6, 9-13, 17, 19, 20, 22-28, 30-37 and 39-43 under examination.

In the Office Action, claims 1-6, 9-13, 17-43 and 53-68 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Office Action alleged that the claims contained subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the Office Action alleged that the amendment to the claims “egg based material has a yellow-white appearance of an egg, an egg-like taste and egg-like consistency” did not appear to have support in the original specification. Applicant respectfully disagrees. The mere fact that a term or phrase used in the claim has no antecedent basis in the specification disclosure does not mean, necessarily, that the term or phrase is indefinite. There is no requirement for the words in a claim must match those used in the specification disclosure. Applicants are given a great deal of latitude in how to choose and define the invention so long as their terms or phrases used define the invention with a reasonably degree of clarity and precision. See MPEP 2173.05(e).

However, to further prosecution in this application, applicant has deleted the phrase that the egg-base “has a yellow-white appearance of an egg, an egg-like taste and an egg-like consistency” and substituted therefor in all the independent claims being examined, that the egg-based material is characterized as “the egg-based material originates substantially no free water upon freezing and then thawing and exhibits substantially similar chewability characteristics after freezing and thawing as the egg-based material had prior to freezing and thawing.” Support for this amendment is clearly found on page 32, lines 24, continuing to page 33, line 7 and page 33, line 19, continuing to page 34, line 4 of the application.

In view of the above amendment, the rejection under 35 U.S.C. § 112, first paragraph, is respectfully requested to be withdrawn.

In addition, the Office Action rejected the same claims under 35 U.S.C. § 112, second paragraph, as being indefinite due to the term “egg-like”. Since this term is no longer in the claim, it is believed that this rejection is now moot, and it is respectfully requested that this rejection be withdrawn.

Next, the Office Action rejected claims 1-6, 9-13, 17, 18, 22-26, 28, 29, 33-38, 41, 43, 53-56, 59-64, 67 and 68 under 35 U.S.C. § 102(b) as being anticipated by JP ‘959. In rejecting the claims, the Office Action alleges that JP ‘959 discloses all of the elements of the above mentioned claims including that the “egg material will coagulate during baking and it is expected that due to the presence of the starch therein that said product would exhibit some freeze/frostability”.

As the independent claims 1, 22, 35, 53 and 61 have been amended, the product produced under the process is not disclosed in JP ‘959. The product of JP ‘959 is a creampuff cake. A creampuff cake, as JP ‘959, states is a cake that comprises a puffed dough with a fixed amount of breadcrumb and baking mixture that has a hollow for accepting a creampuff.

All of the independent claims in the application have been amended to distinguish over bakery goods such as creampuffs by amending to state that the egg-based material comprises a natural egg component “comprising between about 65 weight percent and 99.5 weight percent of the egg-based material.” Support for this amendment can be found on page 4, lines 19-22. Creampuffs do not have as much natural egg component as the egg-based material being claimed and due to this difference have entirely different characteristics.

In view of the above, claims 1-6, 9-13, 17, (claim 18 having now been cancelled) claims 22-26, 28, (claim 29 having now been cancelled) 33-37, (claim 38 having now been cancelled) 41, 43, 53-56, 59-64, 67 and 68 are now in allowable form.

Next, the Office Action rejected claims 22-26, 28 and 53-55 under 35 U.S.C. § 103(a) as being unpatentable over JP ‘455. The Office Action stated that JP ‘455 discloses a

process of preparing a food wherein an egg solution is blended with a cooked water-absorbent material (breadcrumbs) and wherein the same are heated and coagulated.

Applicant respectfully disagrees. As amended, all the independent claims of this application include a natural egg component of at least 65% of the natural egg-based material. Furthermore, independent claims 22 and 53 define the egg-based material as comprising a water absorbent material between 0.2 and 8.0 weight percent. A translated copy of JP '455 is attached. The translation states that if the amount of bread crumbs (the alleged water absorbent material) is less than 20 parts (of 100 parts of the egg solution) that the egg processed food is too hard. Page 3, seventh paragraph of the English translation. In view of this, JP '455 teaches away from the present application with respect to the quantity of bread crumbs.

In view of the above, it is respectfully requested that the rejection of claims 22-26, 28 and 53-55 under 35 USC § 103(a) in view of JP '455 be withdrawn, and the claims allowed.

Next, the Office Action rejected claims 27 under 35 USC § 103(a) as being unpatentable over JP '959. However, in view of the amendment to claim 22 from which claim 27 depends, claim 27 is allowable for the same reasons given with respect to claim 22. In addition, as discussed previously, claim 22 defines the natural egg component as comprising between about 65 weight percent and 99.5 weight percent of the egg-based material. JP '959 neither teaches nor suggests such a concentration of a natural egg component. In view of the above, it is respectfully requested that the rejection of claim 27 be withdrawn and the claim allowed.

Next, the Office Action rejected claims 19, 20, 30-32, 39, 40, 57, 58, 65 and 66 under 35 USC § 103(a) as being unpatentable over JP '455 taken together with either one of Hudson et al. (U.S. Patent 7,264,840), Wiker et al. (U.S. Patent 4,421,770) or Rapp et al. For the same reasons given with respect to independent claims 1, 22, 35, 53 and 61, from which these dependent claims depend from directly or indirectly, the invention described in these claims is neither taught nor suggested by the combination of references, for the same reasons as given with respect to the independent claims from which these claims depend from. Therefore, in view of

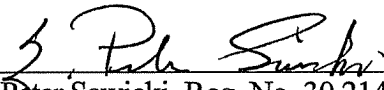
this, it is respectfully requested that the rejection of these claims be withdrawn, and these claims allowed.

In view of the above, it is respectfully requested that all of the claims be reconsidered and allowed. A Notice of Allowance is respectfully requested.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

WESTMAN, CHAMPLIN & KELLY, P.A.

By: 
Z. Peter Sawicki, Reg. No. 30,214
900 Second Avenue South, Suite 1400
Minneapolis, Minnesota 55402-3319
Phone: (612) 334-3222 Fax: (612) 334-3312

ZPS:mek